

Jamaluddin and ors. Vs. Asimullah and ors.

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Court : Allahabad

Decided On : Jul-24-1973

Reported in : AIR1974All69

Judge : Jagmohan Lal and ;Prem Prakash, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 and 47(1); Specific Relief Act, 1961 - Sections 6, 6(3) and 6(4)

Appeal No. : Second Execution of Decree Appeal No. 3 of 1969

Appellant : Jamaluddin and ors.

Respondent : Asimullah and ors.

Advocate for Def. : H.D. Srivastava, ;Umesh Chandra and ;S.P. Pathak, Advs.

Advocate for Pet/Ap. : Mohd. Husain and ;Abid Ali, Advs.

Disposition : Appeal dismissed

Judgement :

Jagmohan Lal, J.

1. This second appeal arising out of execution proceedings was referred by a learned single Judge of this Court to a Bench on account of some important point involved therein. The brief facts giving rise to this appeal were that the

respondents Azimullah and others brought a suit under Section 6 of the Specific Relief Act, 1963 against Jamahiddin and others appellants for possession over plot No. 545/3 measuring nine biswas. That suit was decreed. The decree-holders put that decree in execution and obtained possession over a piece of land describing it to be plot No. 545/3. An objection under Section 47 of the Code of Civil Procedure was filed by the judgment-debtors alleging that the land on which possession was actually delivered to the decree-holders was constituted by plot No. 545/1 which was not the subject-matter of that suit under Section 6 and it belonged to them independently of the decree passed in favour of the respondents. The execution Court issued a commission and after taking into consideration the relevant facts came to the conclusion that the land over which possession had been delivered to the decree-holders was the same in respect of which the decree had been passed and which was numbered as 545/3 though subsequently its number was changed to 545/1. After this finding the objection under Section 47 raised by the judgment-debtors was dismissed.

2. The judgment-debtors then filed an appeal before the District Judge which was dismissed and thereafter they filed this second appeal.

3. A preliminary objection was raised that this second appeal, and actually the first appeal also, was not competent in view of the provisions contained in Sub-section (3) of Section 6 of the Specific Relief Act which provides that no appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed. Execution proceedings are continuation of the suit and an order passed under Section 47 relating to the execution of a decree is also an order of decree to which the provisions of Sub-section (3) shall be applicable. The same view was taken by a learned single Judge of this Court in *Brij Lal v. Mahadeo* : AIR1954 All19 after considering several other cases of this Court and other High Courts. Reference may be made to *Harakh v. Ram Sarup*, (1890) ILR 12 All 579; *Din Dayal v. Patrakhan*, (1896) ILR 18 All 481; *Narayan Permanand v. Nagindas Bhaidas*, (1906) ILR 30 Bom 113; *Kanai Lal Ghose v. Jatindra Nath Chandra*, ILR 45 Cal 519 = (AIR 1918 Cal 925); *Thomas Souza v. Ghulam Moidin Beari*, (1903) ILR 26 Mad 438; *Partab Singh v. Nathu*, AIR 1922 Lah 416; *Munshiram v. Amin Chand*, AIR 1928 Lah 539

and Zakarali v. Israr Hussain, AIR 1947 Nag 53. These decisions with which we respectfully agree support the conclusion that in view of the provision contained in Section 9 of the Specific Relief Act, 1877 (corresponding to Section 6 of the Specific Relief Act, 1963) no appeal shall lie from an order or decree passed in a suit instituted under that section either on the regular side or on the execution side. This is clear from the language of Sub-section (3) of Section 6 itself which, in our opinion, would include even an order passed on the execution side in relation to a decree passed in that suit, That being so, the first appeal filed before the District Judge as well as the second appeal in this Court against the order of the execution Court are incompetent. The present appeal is liable to be dismissed on this preliminary ground alone.

4. It was, however, argued by the learned counsel for the appellants that the appellants would be without a remedy in view of the provisions contained in Sub-section (1) of Section 47, if they are not allowed to challenge the correctness of the order passed by the execution Court in appeal. Sub-section (1) of Section 47 lays down that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. In our opinion the words 'not by a separate suit' refer to a suit of the nature in which the decree under execution itself has been passed. They do not refer to a suit of a different nature which is permitted by Sub-section (4) of Section 6 of the Specific Relief Act 1963 itself. This sub-section lays down that nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof. If the decree that is passed under Section 6 is itself open to challenge by a regular suit permitted by Sub-section (4), there is no reason to think that an order passed in connection with that decree on the execution side under Section 47, Civil P.C. would be a final order and not open to challenge by a similar regular suit. Of course, a suit under Section 6 of the Specific Relief Act cannot be filed to challenge an order passed under Section 47(I) OF CIVIL PROCEDURE, 1908~^ of the Code of Civil Procedure. But a regular suit to challenge that order or for that matter to challenge the decree itself passed under Section 6 of the Specific Relief Act, would not be barred. To that extent the provisions of the general law contained in Section 47(1) OF

CIVIL PROCEDURE, 1908~^ shall be deemed to have been overridden by the special law contained in Sub-section (4) of Section 6 of the Specific Relief Act. So it is not correct to say that the appellants would be without any remedy if their appeal against the order passed by the execution Court under Section 47(1)ODE OF CIVIL PROCEDURE, 1908~^ is not entertained.

5. The appeal is accordingly dismissed on the preliminary point. In the circumstances of the case we make no order as to costs.

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